

Abbreviated Areas of Consideration Related to Fund Development  
(Intended for discussion purposes only)

Basic areas:

1. All health care providers, the legislature, insurance industry and insurance department must support the concept of a Fund.
2. Mandatory basic coverage and Fund participation for all defined health care providers (resident and non-residents). Do not omit the alternative insurance coverage mechanisms and markets (self-insurance, risk retention groups and specialty (383s) authorized insurers need to be included and allowed to participate to the extent possible).
3. Set up an availability plan for defined health care providers. The availability plan would be authorized to charge higher premium and Fund surcharge amounts from those health care providers with risk characteristics that have made them unacceptable in the voluntary insurance markets. Use the Fund to stabilize the availability plan.
4. Removal of vicarious liability for all licensed, registered or certified medical care providers and require all non-Fund medical care providers to maintain a specified minimum professional liability coverage amount.
5. Make sure the Fund is protected from the state; that is, the Fund moneys must be held in trust and accounted for separately by the State. The Fund will need to grow its assets to keep pace with its liabilities, and a fully funded mature Missouri Fund could have a balance in excess of one billion dollars.
6. Provide for notification to the Fund of all cases and claims made against health care providers.
7. Build in an installment payment plan for large Fund losses, preserving the Fund from sudden large unpredictable loss exposures (applicable to the occurrence and not per provider). This will give the Fund an opportunity to adjust its surcharge collections and perhaps even implement some remedial action to mitigate future losses of the same nature.
8. Provide for the investment of the Fund balance for the sole benefit of the Fund. If investments are to be made on behalf of the Fund by the Missouri Treasurer, then by law allow the Fund to utilize a private investment consulting firm that is skilled in making investments for insurance companies.
9. Require at least one annual independent actuarial review.

Things to consider:

1. Include specific due dates for the payment of the Fund Surcharge, providing a method for late payments to include a penalty amount that could be calculated by the party responsible for the surcharge payment. Practicing without basic coverage and Fund participation will not be permitted.
2. Prohibit late payments for coverage periods that are more than 120 days prior to the surcharge payment and coverage documentation submission date. These individuals would need to post some type of proof of financial responsibility for those periods when the provider does not have an acceptable surcharge payment and basic coverage documentation.
3. Limit the Fund coverage to professional liability services rendered in the Fund state.

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4. Include specific provisions for basic coverage that is claims made and specific provisions when the basic coverage is occurrence. (This could result in differing surcharge rates for those purchasing a claim made policy and those purchasing occurrence policies. Also see the last section of this document.)
5. Require prior acts coverage for claims made policy periods. This will assist the health care provider and the basic coverage insurers.
6. Require health care providers who become inactive and are no longer required to comply with the Fund to purchase basic coverage tail (unless the provider had maintained an occurrence basic coverage policy). In this arrangement, there would need to be a Fund tail coverage surcharge based on the cost of the basic coverage tail. In essence, make sure the Fund is always excess of the basic coverage limits. When basic coverage limits are no longer available, the Fund coverage limits will cease (without regard for how much of the Fund coverage limits may be remaining or otherwise available).
7. Allow the health care provider licensing agency a two week grace period for a newly licensed provider to furnish evidence of the required basic professional liability insurance coverage and Fund surcharge payment (coverage inception dates must be concurrent with the effective date of the provider's license).
8. Be careful that the Fund is providing coverage for only participating health care providers; that is, the basic professional liability coverage being required and the Fund coverage being provided should be limited to only the liability arising from professional services rendered by the health care provider required to participate in the Fund. Be wary of attached vicarious liability exposures from employed medical professionals who are not participating in the Fund.
9. Specifically define a basic coverage form that must be used by basic coverage insurers, applying the same coverage provisions to the Fund. Be sure to include a definition of what is a claim and when a claim is made. All insurers and the Fund must be uniform in the coverage being afforded.
10. Set out clear and meaningful requirements for cancellation or termination notices of basic coverage. Copies of such notices must be sent to the licensing agency, the Fund and the health care provider.
11. Include a statistical information provision which mimics the National Practitioner Data Base; that is only licensing agencies may be provided with individual health care provider claim and loss information and others would be furnished with only statistical information that does not reveal the name or otherwise identify a specific health care provider.

Some problems may be opportunities. These include:

- Defining basic and Fund coverage, bringing coverage uniformity, data reporting uniformity and portability of medical professional liability insurance. Incorporating both the claims made and the occurrence basic coverage forms. The Fund could be "form following".
  - Addressing the claims made policy "tail" in a more effective and efficient manner for the insurers and the Fund. (See Things to Consider items 4, 5 and 6 above).
- Set a structure for the basic coverage and Fund coverage limits, a structure that includes a method to make future changes.

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- Protect the Fund from poor coverage and surcharge rate decisions:
  - Effective and efficient management
  - Regular independent actuarial reviews and surcharge rate making assistance
  - A legislative oversight committee to review and assist the Fund
- Recognize the medical care delivery changes and insurance company operations that exist in today's environment
  - Physician Assistants and ARNP involvement in direct primary care
  - Trend toward larger group practice and specialized surgery centers
  - More or less insurer based risk management and loss preventions activities (e.g., St. Paul was especially skilled in these areas)
  - Available technology (e.g., electronic submissions of coverage documentation, surcharge payments, availability of on-line licensure information, database and database reporting technologies.)

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